

CHIEF INFORMATION OFFICER, OFFICE OF THE [129]

Adopted and Filed

Rule making related to the broadband grants program

The Office of the Chief Information Officer (OCIO) hereby adopts new Chapter 22, “Broadband Grants Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8B.4(5) and 8B.11(8).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 8B.11.

Purpose and Summary

New Chapter 22 applies to the Broadband Grants Program established by Iowa Code section 8B.11 and administered by OCIO. As authorized by Iowa Code section 8B.11(8), this chapter establishes program process, management, and measurement rules designed to ensure the effective and efficient administration and oversight of the Broadband Grants Program, the key objective of which is to reduce or eliminate underserved areas (statutorily referred to as targeted service areas) in Iowa by incentivizing the installation of broadband infrastructure by communications service providers therein.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 11, 2018, as **ARC 3728C**. The Iowa Communications Alliance (ICA) submitted several written comments related to the Notice. OCIO has responded to each comment and summarized all changes or reasoning for either adopting or not adopting ICA’s proposed changes in this Adopted and Filed rule making.

First, ICA recommended that OCIO require certain information be included in the draft Notice of Funding Availability (NOFA). OCIO agrees that a detailed NOFA is critical to ensuring a successful program. Accordingly, OCIO has made the previously permissive language in subrule 22.3(2) mandatory. This change also addresses ICA’s request that the NOFA clearly describe the specific scoring criteria pursuant to which and the method by which evaluations will be conducted, because paragraph 22.3(2)“e” will now require that the NOFA set forth the measurement, technical, scoring, or other similar standards, formulas, or criteria the office will utilize in determining whether, to which communications service providers, and in what amount(s) to award grant funds. Relatedly, OCIO incorporated several of ICA’s recommendations relating to matters that should be included in and addressed by the NOFA. Specifically, the NOFA will, in addition to the elements previously listed in subrule 22.3(2), provide an estimate of the date by which OCIO anticipates it will issue award(s), identify allowable and not disallowed expenditures, and set forth what constitutes sufficient and appropriate documentation for purposes of substantiating subsequent requests for reimbursement for allowable and not disallowed expenditures.

Second, ICA recommended that subrule 22.5(1) be revised to afford a period for public comment, not only in OCIO’s discretion, but also upon a timely submitted request by an applicant or member of the public. The OCIO fully anticipates making grant applications available for public comment as part of the review process; however, for administrative reasons, OCIO has elected to reserve the right to decide this issue unilaterally. For example, as part of the process to afford applicants an opportunity to seek confidential treatment of portions of their applications, applicants will be required to submit both an unredacted and a redacted version of their applications. To protect and preserve confidentiality, OCIO

will post the redacted versions online for purposes of the public comment process. If applicants fail to comply with this redaction requirement, it would be administratively burdensome for OCIO to, itself, redact purportedly confidential portions of applications. Accordingly, OCIO will make grant applications available for public comment, but cannot commit itself to redacting upon request, in that doing so may not ultimately be administratively feasible.

Third, ICA recommended that “local match,” as referenced in subparagraph 22.5(3)“a”(5), be defined to include any “private and public sources of funding available to the applicant and to be utilized in connection with the applicant’s proposed project.” OCIO agrees with this definition and has updated the subparagraph accordingly. In addition, ICA requested that OCIO give preference to projects that leverage federal funds. OCIO believes the definition of “local match” proposed by ICA and now adopted by OCIO encompasses federal funds and thereby encompasses ICA’s suggestion. In addition, or in the alternative, subparagraph 22.5(3)“a”(6) permits OCIO to consider “other factors deemed relevant by the office as stated in the NOFA.” In finalizing the NOFA, OCIO will further consider ICA’s recommendation pursuant to this provision.

Fourth, ICA recommended that subrule 22.5(4) be revised to either provide notice to unsuccessful applicants that they have not been issued an award either by directly notifying them or by providing a specific date that the application results would be posted. The OCIO has updated subrule 22.3(2) to require that OCIO “provide an estimate of the date by which the office anticipates it will issue award(s).” Accordingly, the NOFA will include an estimated issuance date. If OCIO later determines it cannot meet that estimated date, OCIO will post an amendment to the NOFA identifying an updated estimated award date and thereby provide updated notice to communications service providers consistent with ICA’s request.

Fifth, ICA recommended paragraph 22.6(3)“c,” related to field testing, be revised to (1) place a one-year time limit on OCIO’s ability to conduct field tests following project completion, (2) eliminate OCIO’s ability to conduct field tests before reimbursing a provider for allowed expenditures, and (3) more specifically define where and the manner in which OCIO may conduct field tests. OCIO addresses each of these points as follows:

- With respect to point (1), OCIO understands that communications service providers may have concerns about being subject to audit indefinitely. However, one year is not a sufficient time period to ensure that broadband infrastructure deployed utilizing state funds meets the program requirements and goals for a meaningful period of time. For example, a communications service provider could seek and obtain reimbursement for broadband infrastructure that facilitates 25 megabits per second of download speed and 3 megabits per second of upload speed (25/3 Broadband) in a targeted service area identified in the provider’s application, wait the proposed one-year period, and then redeploy the infrastructure elsewhere. OCIO believes a five-year window would be a more appropriate time period and strikes a fairer balance between the state’s interest in ensuring that state funds are utilized for their intended purpose and the communications service providers’ interest in not being indefinitely committed to audit or scrutiny.

- With respect to point (2), OCIO understands ICA’s concern that the language drafted in OCIO’s Notice of Intended Action was unclear as to whether OCIO would possess the discretion to withhold grant funds following project completion unless and until such time as OCIO audited the completed project to verify compliance with the requirements of Iowa Code chapter 8B, these rules, the NOFA, and the grant agreement executed between the parties, irrespective of how long OCIO waited to exercise such audit rights. OCIO agrees that it should and will conduct any field audits that serve as a precondition to any reimbursement within a reasonable time, not to exceed one year, to more fairly balance the state’s interest in ensuring that state funds are utilized for their intended purpose and the communications service providers’ interest in being reimbursed for allowable expenditures within a reasonable time.

- With respect to point (3), OCIO has, in part, adopted language proposed by ICA to more specifically define where and in what manner OCIO may conduct such field tests and to distinguish between circumstances where broadband infrastructure is actually serving customers versus merely being in place to serve upon request by prospective customers. With respect to the latter scenario, OCIO has modified ICA’s proposed language to ensure that any engineer utilized to certify that a project meets

the applicable requirements is an independent third party and is properly licensed. These additions are necessary to ensure both the objectivity and credibility of the results. In addition, the costs of such audit shall be borne by the grantee.

Sixth, ICA recommended that the rules be updated to more clearly define a grantee's obligation in terms of timely completing a project for which grant funds have been utilized. OCIO agrees that providing more clarity on this point would aid applicants in understanding the expectations in advance. Accordingly, OCIO has added paragraph 22.4(2)"e" to require that applicants identify an anticipated project completion date as part of their applications, which date shall not exceed five years from the date the NOFA is issued. The anticipated project completion date will serve as the basis for determining timely project completion.

Seventh, ICA recommended that rule 129—22.7(8B) be revised to disallow grant funds previously committed to specific grantees that were not ultimately distributed or that were otherwise repaid to OCIO from being reverted by OCIO to the General Fund. OCIO believes ICA misunderstood the intent of this rule, which is to ensure compliance with Iowa Code section 8B.11(2)"c." That said, OCIO has updated this rule to clarify its intent, namely: if funds previously committed to specific grantees are not ultimately distributed or are recouped prior to the two-year reversion period established by Iowa Code section 8B.11(2)"c," OCIO will either award the grant funds to prior grantees or open additional application rounds.

Eighth, ICA recommended that OCIO clarify the type or format of mapping data which communications service providers must provide OCIO as part of the grant administration process. OCIO was intentionally vague about the specific type and format to ensure that communications service providers have a degree of flexibility in supplying this information to OCIO in a manner that is not administratively inconvenient or overly costly to them. OCIO has updated subrule 22.6(2) to more clearly reflect OCIO's willingness to work with communications service providers in identifying a type or format that works for both parties. If ICA seeks further clarification or specificity on behalf of its members, OCIO is willing to be more specific in the NOFA to the extent interested parties can identify preferred or disfavored data or format types. Additionally, per ICA's request, OCIO has updated this rule to clarify that OCIO requires mapping data as it relates to all infrastructure installed by communications service providers and supported, in whole or in part, by state funds, regardless of whether such infrastructure actually serves any customers in targeted service area(s) forming a basis of the application at the time such mapping data is supplied to OCIO.

Ninth, ICA recommended that OCIO modify subrule 22.4(4) to permit the redaction of confidential information submitted to OCIO, including as part of the application process. OCIO believes this rule already permitted as much "in narrowly defined circumstances as stated in the NOFA." However, for the avoidance of doubt, OCIO replaced this provision with the specific process OCIO will deploy in the NOFA. Notably, this is the same process OCIO utilized in administering the broadband map appeals process under 129—Chapter 20. See 129—subrule 20.5(7).

Tenth, ICA recommended that OCIO give preference to applications for the installation of broadband infrastructure at or above 100 megabits per second of download speed and 10 megabits per second of upload speed in targeted service areas. While OCIO appreciates both this suggestion and information supplied by ICA as outlining the evolution and development of standards at both the federal level and in other states, OCIO is cognizant of the definition of a targeted service area in Iowa Code section 8B.1(12), which establishes the standard for Iowa: 25/3 Broadband. As a result of this declaration of legislative intent, OCIO believes the legislature, rather than the executive branch, would be the appropriate branch of government to consider raising Iowa's standard.

Eleventh, ICA recommended that OCIO require applicants to demonstrate financial capability as part of the application process. Subrule 22.4(2) generally establishes the minimum requirements to be included in an application, and OCIO may introduce additional requirements in the NOFA. Accordingly, while OCIO will continue to consider ICA's request as part of the process of finalizing the NOFA, OCIO is of the opinion that considering financial capability in a manner that would disqualify applicants would unduly disadvantage newer market entrants. Thus, to the extent OCIO does elect to elicit such

information, OCIO will consider such information in a manner that is not disqualifying per se, for example, as a risk factor in prioritizing verification/audit tasks.

Finally, ICA recommended that subrule 22.4(5) be revised to clarify the scope of and impose more stringent limitations on the limited exception for broadband infrastructure installed outside of a targeted service area(s). Specifically, ICA recommended OCIO (1) clarify whether the exception is available for broadband infrastructure installed in any census block that is not a targeted service area or whether the exception is limited to broadband infrastructure installed in a census block that is adjacent to a targeted service area; and (2) limit the amount of grant funds awarded that could be utilized pursuant to the exception.

- With respect to (1), OCIO has added language clarifying that the exception is intended to be available to broadband infrastructure installed in any census block that is not a targeted service area. The underlying purpose of this exception is to ensure that the rules do not unduly favor certain types of technologies or providers. Iowa Code section 8B.11(3) permits “[c]ommunications service providers [to] apply to the office for a grant pursuant to this section for the installation of broadband infrastructure that facilitates broadband service at or above [25/3 Broadband].” Likewise, the definition of “broadband” under Iowa Code section 8B.1(1) expressly includes “fixed wireless and mobile wireless mediums,” evincing a legislative intent to make the program meaningfully available to and designed to incentivize a wide variety of applicants and technology solutions. As a general matter, OCIO is of the opinion that it is less administratively burdensome to administer the program with respect to broadband infrastructure installed in targeted service areas; however, establishing a bright-line rule that limits the program in that manner unduly disadvantages wireless and mobile technologies, which are more likely to be deployed in census blocks that are not targeted service areas but which nevertheless provide service into targeted service areas. The exception strikes a fair balance between efficiently and effectively administering the program and effectuating the underlying legislative intent of remaining technology and provider neutral.

- With respect to (2), subrule 22.4(5) requires providers to identify how they would proportionally allocate the costs of and for broadband infrastructure installed outside of targeted service areas but which facilitates 25/3 Broadband within targeted service areas underlying the application, and numbered paragraph 22.6(3)“a”(1)“2” only permits providers to recoup those proportional expenditures (i.e., the amount of funds actually attributable to broadband delivery within targeted service areas).

Adoption of Rule Making

This rule making was adopted by OCIO on October 1, 2018.

Fiscal Impact

OCIO will use the existing budget and resources to implement these rules, including any specific appropriations made during the 2018 Legislative Session for such purpose.

Jobs Impact

Deployment of grant funds should lead to the deployment of additional broadband projects by communications service providers and therefore increased job opportunities across the state.

Waivers

These rules establish general processes and procedures applicable to the posting of opportunities related to and applications for grant funds. Specific requirements, however, will be more fully articulated in the Notice of Funding Availability, as stated in these rules. Waivers will be handled in accordance with the terms of the Notice of Funding Availability—similar to the manner in which waivers for requests for proposals in the procurement context are handled.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on November 28, 2018.

The following rule-making action is adopted:

Adopt the following **new** 129—Chapter 22:

CHAPTER 22
BROADBAND GRANTS PROGRAM

129—22.1(8B) Definitions. The definitions in rule 129—20.1(8B,427) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall also apply:

“*Grantee*” means a communications service provider awarded grant funds by the office pursuant to and in accordance with Iowa Code section 8B.11 and these rules.

“*Project*” means an installation of broadband infrastructure by a communications service provider in one or more targeted service areas. Except in limited circumstances otherwise permitted herein, a project may not be comprised of, in whole or in part, census blocks that are not targeted service areas.

129—22.2(8B) Purpose and scope. This chapter applies to the broadband grants program established by Iowa Code section 8B.11 and administered by the office. As authorized by Iowa Code section 8B.11(8), this chapter establishes program process, management, and measurement rules designed to ensure the effective and efficient administration and oversight of the program, the key objective of which is to reduce or eliminate targeted service areas in the state of Iowa by incentivizing the installation of broadband infrastructure by communications service providers therein.

129—22.3(8B) Notice accepting grant funds.

22.3(1) The office shall provide notice to communications service providers when grant funds become available for distribution by the office by posting a “Notice of Funding Availability” (NOFA) online at iowagrants.gov and ocio.iowa.gov/broadband.

22.3(2) Such NOFA shall:

- a. Generally describe the application process.
- b. State the date, time, and manner by which applications for such grant funds must be submitted to the office in order to be eligible for consideration by the office for an award of grant funds.
- c. State the total amount of grant funds available for distribution under the applicable NOFA and provide an estimate of the date by which the office anticipates it will issue award(s).
- d. Describe the factors the office will consider in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- e. Set forth any measurement; technical, scoring, or other similar standards; formulas; or criteria the office will utilize in applying any factors considered by the office in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- f. Identify allowable and not disallowed expenditures which may be included in an applicant's total project costs and set forth what constitutes sufficient and appropriate documentation for purposes of substantiating subsequent requests for reimbursement for allowable and not disallowed expenditures.
- g. State any other terms, conditions, requirements, or processes applicable to communications service providers submitting applications for grant funds, including but not limited to any grant

agreement the office may require a grantee to enter into as a condition of receiving grant funds pursuant to subrule 22.6(1).

129—22.4(8B) Applications for grant funds.

22.4(1) *Application process.* Following the issuance of a NOFA by the office, communications service providers may apply to the office for grant funds for the installation of broadband infrastructure at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in targeted service areas. Applications shall be made and submitted in accordance with the terms of the NOFA.

22.4(2) *Contents of application.* In addition to any other questions or requirements established by the NOFA, an application shall, at a minimum, include:

- a. The communications service provider's legal and business name and address;
- b. The name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application;
- c. The census block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application/project (i.e., the targeted service area(s) in which the proposed installation of broadband infrastructure will occur);
- d. Attestation that the broadband infrastructure installed in the targeted service area(s) will facilitate broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed;
- e. An anticipated project completion date, which shall not exceed five years from the date the NOFA is issued. An applicant's anticipated project completion date shall be used to determine whether a grantee's failure to complete a project in a timely manner warrants a finding of noncompliance for purposes of subparagraph 22.6(4)“b”(2).

22.4(3) *Deadlines.* The office will only consider applications received on or before the applicable deadline as stated in the NOFA, unless the office, in its sole discretion, establishes a different deadline for the submission of applications. The office may establish a different deadline for all applicants, but will not change the deadline for or at the request of any individual applicant.

22.4(4) *Confidentiality of contents of applications.* The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Applicants or other persons or parties submitting information to the office are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting applications or other information to the office. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all information submitted by applicants or other persons or parties as public, nonconfidential records unless an applicant or other person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

a. In addition to any other administrative requirements established by the NOFA, an applicant or other person or party requesting confidential treatment of portions of an application or other information submitted to the office must:

- (1) Fully complete and submit to the office Form 22 as provided by the office.
- (2) Identify the request in the NOFA, or if other information is submitted to the office, identify the request in the transmittal email or cover letter for the written correspondence.
- (3) Conspicuously mark the outside of any submission as containing confidential information.
- (4) Mark each page upon which confidential evidence or information appears.
- (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the otherwise public evidence and information as possible.

b. Form 22 will not be considered fully complete unless, for each request for confidential treatment, the applicant or other person or party:

- (1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific information as confidential.

- (2) Justifies why the specific information should be maintained in confidence.
- (3) Explains why disclosure of the specific information would not be in the best interest of the public.
- (4) Sets forth the name, address, telephone number, and email address of the individual authorized by the applicant or other person or party submitting such information to respond to inquiries from the office concerning the confidential status of such information.

c. Failure to request that information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Applicants or other persons or parties may not request confidential treatment with respect to information specifically identified by the office in the NOFA as being subject to public disclosure. Blanket requests to maintain an entire application or all information otherwise submitted to the office as confidential will be categorically rejected.

22.4(5) Limited exception for broadband infrastructure installed outside of targeted service areas. These rules generally limit the use of grant funds to and for broadband infrastructure installed within targeted service areas. This limitation is designed to ensure that the use of grant funds has the greatest possible impact on eliminating targeted service areas and to ensure the office's effective, efficient, and responsible management and oversight of the program. Notwithstanding this limitation, the office may, on a limited basis and in the office's sole discretion, permit communications service providers to apply for and utilize grant funds for broadband infrastructure installed outside of targeted service areas that facilitates or is essential to and inextricably intertwined with facilitating broadband infrastructure within targeted service areas forming the basis of a project, provided that a communications service provider applying for any such exception shall be required to clearly demonstrate, to the office's sole satisfaction:

a. Why and how reimbursement for such broadband infrastructure deployed outside of a targeted service area(s) facilitates or is essential to and inextricably intertwined with facilitating broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area(s) forming the basis of a project and cannot otherwise be excluded from the application; and

b. The specific methods or formulas the communications service provider will utilize in proportionally allocating the costs of and for such broadband infrastructure to targeted service area(s) forming the basis of the project to which broadband service is facilitated by such infrastructure.

129—22.5(8B) Application review process and award of grant funds.

22.5(1) Optional period for public comment. Following the expiration of the deadline for the receipt of applications stated in the NOFA, the office may, in its sole discretion, open a period for public comment as it relates to such applications through the state of Iowa's public comment website: comment.iowa.gov. If the office elects to solicit public comment pursuant to this rule, any member of the public will be permitted to submit comments regarding applications received by the office.

22.5(2) Review committee. Following the expiration of the deadline for the receipt of applications stated in the NOFA, the office will supply all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B to a review committee established by the office comprised of representatives selected by the office from schools, communities, agriculture, industry, and other areas. The review committee will review the applications and provide input/make recommendations to the office regarding whether, to which projects, and in what amount(s) to award grant funds, in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B.

22.5(3) Office final decision. Following the office's receipt of the review committee's input or recommendations and the closure of the period for public comment, if any, the office will review all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B, the input/recommendations made by the review committee, and any public comment solicited/received, all in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa

Code chapter 8B, and make a final agency decision regarding whether, to which projects, and in what amount(s) to award grant funds.

a. In so doing, the office will take into consideration the following factors, in accordance with and in the manner specified by the terms, conditions, and requirements of the NOFA:

(1) The relative need for broadband infrastructure in the area and the existing broadband service speeds. Existing broadband service speeds may be determined by reference to the statewide map referenced in rule 129—20.4(8B,427).

(2) The percentage of the homes, schools, and businesses in the targeted service area(s) forming the basis of the project that will be provided access to broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as a result of the project.

(3) The geographic diversity of the project areas of all applicants.

(4) The economic impact the project will have on the area.

(5) The applicant's total proposed budget for the project, including the amount or percentage of local match, if any. For purposes of this chapter, "local match" shall include any private and public sources of funding available to the applicant and to be utilized in connection with the applicant's proposed project.

(6) Any other factors deemed relevant by the office as stated in the NOFA.

b. In determining whether, to which projects, and in what amount(s) to award grant funds, the office will not:

(1) Base its decision on the office's prior knowledge of any applicant except for the information provided in the application; or

(2) Make an award that exceeds 15 percent of any communications service provider's total estimated allowable project costs for a proposed installation of broadband infrastructure.

22.5(4) *Notice to applicants of decision and right to appeal.* The office shall notify each communications service provider awarded a grant by the office of the office's decision(s) in accordance with the terms and conditions of the NOFA. The office will also post such decision(s) online at iowagrants.gov and ocio.iowa.gov/broadband. Unsuccessful applicants are solely responsible for reviewing such websites to determine their award status. Such agency decision(s) shall become final unless, within ten days of such email transmission or posting, an applicant which was adversely affected by a decision of the office files a request for a contested case proceeding pursuant to 129—Chapter 6. Failure to challenge the office's decision under this rule by filing a request for a contested case within the ten-day period shall waive any claims an applicant may have related to the office's administration of the process and otherwise be deemed a failure to exhaust administrative remedies.

129—22.6(8B) Administration of award.

22.6(1) *Grant agreement required.* The office may require a grantee to enter into a grant agreement with the office in accordance with the terms, conditions, and requirements of the NOFA. Such grant agreement may include, but not be limited to, the total amount of the grant funds awarded to the grantee; a description of the project to be completed by the grantee and specifications related thereto; a description of allowable expenditures; conditions related to the disbursement of grant funds; default and termination procedures; performance, certification, and verification requirements/criteria necessary to confirm project success/completion; and repayment requirements in the event the grantee does not fulfill its obligations under the agreement, these rules, or Iowa Code chapter 8B. In addition to any terms, conditions, or requirements specifically set forth in such agreement, any and all requirements established by Iowa Code chapter 8B, these rules, other applicable law, rule, or regulation, or the NOFA shall be deemed incorporated by reference into such grant agreement as if fully set forth therein.

22.6(2) *Mapping data required.* Upon project completion, a grantee must supply the office with geographic information system (GIS) data in a form mutually acceptable to both the office and grantee demonstrating specifically where broadband infrastructure for which grant funds have been utilized, in whole or in part, has been installed, regardless of whether such infrastructure actually serves any customers in targeted service area(s) forming a basis of the application at the time such mapping data is supplied to the office. Such GIS data must enable the office to determine which specific homes, schools,

and businesses within each targeted service area forming the basis of the project have access to broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as a result of the project.

22.6(3) Reimbursements, record keeping/audits, performance/certification, and repayment. In the absence of more specific provisions in an agreement executed between a grantee and the office in accordance with these rules establishing conflicting or inconsistent terms and conditions, the following terms and conditions shall apply by default to any award of grant funds made by the office under Iowa Code section 8B.11 and these rules:

a. Reimbursement.

(1) General. A grantee shall only be reimbursed by the office for:

1. Allowable and not disallowed expenditures actually and previously incurred by the grantee. What constitutes allowable or disallowable expenditures shall be further specified in the NOFA or grant agreement;

2. Expenditures for broadband infrastructure installed in targeted service areas; or, in the limited circumstances permitted herein, to the extent any expenditures relate to broadband infrastructure installed outside of targeted service areas but which facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed within targeted service areas underlying the application, only for the proportionate amount that such broadband infrastructure facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed within targeted service areas; and

3. Expenditures for which the grantee is able to supply sufficient and appropriate documentation. What constitutes sufficient or appropriate documentation shall be further specified in the NOFA or grant agreement.

(2) Timing. Requests for reimbursement may be submitted to the office in accordance with the terms and conditions in the NOFA or grant agreement.

b. Performance/certification. After the completion of a project utilizing, in whole or in part, grant funds, a grantee must:

(1) Certify to the office that the project was completed as proposed in the original application, including but not limited to that the final installation was installed in or otherwise facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in each of the applicable targeted service areas identified in the original application, and identify the total number of homes, schools, and businesses actually receiving broadband service in each targeted service areas identified in the original application as a result of the project.

(2) Attest that any claimed, allowable expenditures are true and accurate, were directly related to the installation of broadband infrastructure that facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in eligible targeted service areas forming the basis of the project, and were properly allocated in accordance with the terms, conditions, and requirements of the NOFA or grant agreement.

(3) Supply the office with updated GIS data in accordance with subrule 22.6(2).

c. Field testing. The office may, in its discretion, conduct field tests, on one or multiple occasions, for compliance with the requirements of Iowa Code sections 8B.1 and 8B.11, these rules, and any grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1) for up to five years after broadband service is certified as complete in accordance with paragraph 22.6(3) "b." The office may exercise this right both before and after reimbursing a grantee for any claimed, allowable expenditures, but if the office elects to do so before reimbursing a grantee for any claimed, allowable expenditures, it will do so within a reasonable time, not to exceed one year, after broadband service is certified as complete in accordance with paragraph 22.6(3) "b." Such field tests may include but not be limited to:

(1) Speed tests anywhere between a grantee's central office and the demarcation at any customer's location in a targeted service area or census block in which the project was to be deployed;

(2) In the case of wireless installations, from any location in a targeted service area or census block in which the project was to be deployed; or

(3) In the case where a grantee does not have a customer in a targeted service area being served by the installation, certification obtained by the grantee and supplied to the office from an independent third party who is a properly licensed engineer that the installation facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in applicable targeted service areas identified in the original application. The costs of such certification shall be borne by the grantee.

d. Disbursement/repayments.

(1) A grantee shall not be entitled to the applicable portion of any grant funds or shall be obligated to repay the office the applicable portion of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

2. Claimed expenditures or the total amount previously reimbursed by the office exceeds 15 percent of the grantee's estimated or final total allowable project costs, whichever is less.

(2) A grantee shall not be entitled to any grant funds or shall be obligated to repay the office the entire amount of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or does not facilitate broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area identified in the original application;

2. A grantee fails to complete the project as proposed in the original application; or

3. Any representation or warranty made by a grantee in an application for grant funds, a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

e. Notice of default. If the office determines a grantee is not entitled to or is otherwise required to repay the office in accordance with paragraph 22.6(3) "d," the office may issue the grantee a "Notice of Default," which shall afford the grantee 30 days to cure the default. Whether a grantee has sufficiently cured the default shall be determined in the sole discretion of the office. If a grantee fails to cure the default within 30 days, the office may issue an order requiring the grantee to reimburse the office for the amount specified in the "Notice of Default."

22.6(4) Remedies for noncompliance. In addition to issuing a "Notice of Default" and subsequent order requiring the grantee to reimburse the office for failing to cure the default pursuant to paragraph 22.6(3) "e" and any other remedies available to the office pursuant to a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), the office may, for cause, find that a grantee is not in compliance with the requirements of Iowa Code section 8B.11, these rules, or a grant agreement entered into by the office and a grantee pursuant to subrule 22.6(1).

a. At the office's sole discretion, remedies for noncompliance may include, but are not limited to, the following:

(1) Issuing a warning letter stating that further failure to comply with program requirements within a stated period of time will result in a more serious action.

(2) Conditioning a future grant on compliance with program requirements within a stated period of time.

(3) Disallowing future reimbursements.

(4) Requiring that some or all previously issued grant funds be reimbursed to the office.

b. Reasons for a finding of noncompliance include, but are not limited to, one or more of the following:

(1) A violation of any of the terms or conditions of a grant agreement entered into between the office and a grantee pursuant to subrule 22.6(1);

(2) A grantee's failure to complete a project in a timely manner;

- (3) A grantee's failure to comply with any applicable state laws, rules, or regulations;
- (4) Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;
- (5) Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or that does not facilitate broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area identified in the original application;
- (6) A grantee fails to complete the project as proposed in the original application;
- (7) The total claimed expenditures or the amount previously reimbursed by the office exceeds 15 percent of the grantee's estimated or final total allowable project costs, whichever is less;
- (8) Any representation or warranty made by a grantee in an application for grant funds, an agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

22.6(5) Office's decision and right to appeal.

a. Any decision of the office entitled "proposed decision," "final decision," or other like caption as relating to any issues described in subparagraphs 22.6(5) "a"(1) through (5) below shall become final unless, within 30 days of the transmission of such decision by the office by email to the email address of the individual identified in paragraph 22.4(2) "b" or to the email address of a person otherwise identified by the grantee in writing prior to the issuance of such decision as the person authorized by the grantee to respond to inquiries regarding the administration of the grant, a grantee which is adversely affected by the decision files a request for a contested case proceeding pursuant to 129—Chapter 6.

- (1) The interpretation, construction, or application of any terms or conditions or resolution of a dispute under a grant agreement entered into between the office and a grantee or under these rules;
- (2) Whether or in what amount a grantee is entitled to reimbursement pursuant to a grant agreement entered into between the office and a grantee, or under these rules;
- (3) Whether or in what amount a grantee must repay the office pursuant to a grant agreement entered into between the office and a grantee or under these rules;
- (4) The imposition of any remedies for noncompliance in accordance with subrule 22.6(4); or
- (5) Any other decision of the office that relates to the administration of a grant awarded pursuant to Iowa Code section 8B.11, these rules, or a grant agreement entered into between the office and a grantee.

b. Failure to challenge the office's decision under this rule by filing a request for a contested case within the 30-day period shall waive any claims an applicant may have related to the administration of a grant award and otherwise be deemed a failure to exhaust administrative remedies.

129—22.7(8B) Reallocation of grant funds. Subject to applicable law, including but not limited to Iowa Code section 8B.11(2) "c," if grant funds that the office had previously committed to specific grantees are not ultimately issued to a grantee (e.g., because applicable expenditures are not allowed or are disallowed, applicable expenditures were improperly or incorrectly allocated, or a grantee fails to provide sufficient or appropriate documentation to support a claim for reimbursement) or are otherwise repaid to the office pursuant to a grant agreement entered into between the office and a grantee or these rules, the office may award the grant funds to other previous grantees or open additional rounds for applications. If the office awards additional grant funds to other grantees, such grantees shall submit documentation establishing how such grant funds will be expended and may, to the extent applicable, be required to execute contract

amendments with the office providing for the expenditure of the additional grant funds and will otherwise be subject to Iowa Code section 8B.11 and these rules.

These rules are intended to implement Iowa Code section 8B.11.

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